

# THE CONTENT OF THE HUMAN RIGHT TO WATER. A LEGAL-POLITICAL ANALYSIS FROM THE LATINAMERICAN STANDPOINT

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## Abstract

This paper explores the key points of water as a human right (HRW) from the Latin American point of view. This is because although the HRW is a universal right, the problems with its articulation, content and implementation vary according to legal and political context. Among other legal premises, the paper states that HRW has been recognized by law first as a *common use* of water, then as a *public service* and finally as a *human right*. Nowadays, all these different conceptions are part of a complex regulation that must be integrated to current concrete water law institutions. The paper discusses, existing rights, water allocations, limits, suspension for unpaid drinking water service, etc. Furthermore, the paper analyzes critically, the international legal discourse on human rights, the recent UN General Assembly resolution (2010) and highlights that HRW is not only a legal matter or a water availability issue but an economic problem and therefore a problem of poor countries or regions.

Key words: right to water and sanitation – human rights – UN resolution 2010

## I. Introduction

The right to water and sanitation has been the object of separate and autonomous or single consideration by norms, international treaties and doctrine (COHRE et al 2008; Martin et al, 2011; Conseil d'état, 2010). In fact, and to cite only a few sources, in the 2002 General Observation nr. 15 from the UN Committee on Economic, Social and Cultural Rights (CESCR), articles 11 and 12 of the Pact have defined the human right to water as 'everyone's right to dispose of sufficient water, salubrious, acceptable, accessible and obtainable for both personal and domestic use'.

On the other hand sanitation has been defined as: 'The access and use of installations and services for the elimination of excreta and waste water which offer privacy and, at the same time, guarantee environmental hygiene and salubrity both in users' home and close surroundings.' (Task Team of the UN Millennium Project). Mindful of this, the rights and categories can be considered methodically as different, although presenting an undeniable connection.

In fact, many authors have directly included sanitation within the right to water, since it is inconceivable to consider, either in theory or in practice, the adequate and efficient provision of one can exist without the other. This alludes to the principle of integral service; even if, in fact, there is a distinct difference between them since it is easily verified that a percentage of people lacking access to drinking water is three times lower than those lacking access to sanitation systems (WHO, 2003). It is evident that the right to water can be satisfied, if by this is meant its accessibility, without providing sanitation systems. Although this is highly undesirable, it is perfectly possible and considerably less costly.

Having said this, and taking into account the object of this article, the brief space afforded and present situation of the matter in question, it is preferable to avoid sterile discussions or common misunderstandings (Levin et al, 2009), and advance rapidly into well proven assumptions, namely:

i) We are dealing here with a human right which is recognized at an international level, inter depending on other human rights, of limited content, variable, of progressive satisfaction, that does not imply gratuity (only affordability) nor does it necessarily imply the direct service of public authorities.

ii) As to its scope, this right is often identified with the access to water for personal and domestic uses (20 litres per day for drinking water, personal sanitation, washing clothes, preparing food and personal

hygiene, by specialized UN agencies (UNHCR, FAO, UNICEF, UNESCO), and beyond of at least fifty litres, according to other agencies (WHO) for all basic needs beyond personal and domestic ones), which has led to a shortened view of the content in part of its doctrine. Considering, however, that as a natural or positive right, autonomous or derived, this includes the accessibility to the necessary amount of water in order to satisfy other needs related to inter depending human rights. Personal and domestic use is the minimum content that, in preference over other uses, the State must guarantee, ensuring people access to sufficient water to prevent dehydration and disease. But the right does not end there, the rest will be progressively reached (Embuid Irujo, 2006; Martin et al, 2011).

iii) We are dealing with a need and an individual human right which, at the same time, is a collective right, and implies a series of rights and obligations for individuals both private and public. As such, the responsibility for its effective satisfaction lies at first with the individual, without prejudicing the State's direct responsibility for its regulation and control, or subsidiary for people who cannot accede to this right due to lack of means.

iv) As with every right, it is not absolute and may be limited according to private or public interest, integrating and harmonizing it with the rest of the legal order without denaturalizing it. Indeed, what is particularly conflictive is harmonizing it, especially in situations like: the prohibition of using pipes and water pumps for water's common uses, the inclusion of subsistence farming and factory uses in its content, its coordination with water use priority orders, the economic contributions, suspension or restriction for unpaid drinking water services, its abuse in cases of futures real estate operations illegal or irregular, its exercise in precarious settlements, like shanty towns or emergency camps or in isolated areas. The analysis of these suppositions, facing latinamerican courts decisions, has been already extensively dealt with in a former work (Martin et al, 2011).

## II. Evolution of protection thresholds: common use, public service, human right

The right to water and sanitation as a unit category can and should be related conceptually and historically to three legal institutions having a special leaning toward the field of social rights in Latinamerica: common use, public service and human rights. Different categories and legal frameworks, that now appears simultaneously, agree as to the content; although showing a historical evolution that reveals the progressive attention, consideration and protection of the matter in question, which cannot be evaded in its current consideration.

*Common use* is the legal institution through which the 19th century water laws recognized the right to water as a natural right to all men as such. They are general, free and as long as they do not sensibly affect the volume of water. They may include all domestic uses (drinking, bathing, etc.) but also small subsistence farming and factory uses, depending on each regulated norm. However, this prerogative did not imply the recognition of a "subjective right" of citizen, for whom it was impossible to lodge any legal complaint. The State had no other duty than to tolerate the *common use* of public water for people in general. In terms of the 15th General Observation, the State must respect and maybe protect, without ever having to fulfill (facilitate, promote and guarantee).

But, the problem of supplying sufficient water and sanitation, as a State concern, is increasing due to the urban phenomenon that accuses serious problems in hygiene and public salubrity. In the mid 19th century, the legal framework through which this need was channeled was *public service*, whose organization and provision was in the hands of the State, as well as its direct or indirect service. This model emphasized the State prerogative, the official holder of the service and finally, its concession. Under this system, the citizen had scarce or null rights when facing public authority in order to obtain a positive behavior.

The mainly objective perspective of *common use* and *public service*, formerly mentioned, has only recently begun to slacken, complemented by laying emphasis on the subjective individual and his rights, especially due to the development and consolidation of the so called "social constitutionalism". This notion alludes to the proliferation of the constitutional consecration of social rights articulated around the obligation of the State to guarantee the effective use of certain rights by its citizens. They are usually referred to as positive freedoms in the sense that they do not require a mere abstention of arbitrary interference from the authorities for their full accomplishment, but rather their intervention aiming at the satisfaction of individual and collective concrete needs (the right to work, food, decent living conditions, education, among many others).

With the rise of modern States in the West, a whole system of protection of the human person has been developed, initially contemplated for the safeguard of private and individual spheres. In this sense, it is worth mentioning that the 18th and 19th century declarations of rights consecrate the State's abstention with respect to individual freedoms. On the other hand, "social constitutionalism" corresponds to 20th century principles that proliferate in recognizing political and social rights both on a constitutional and international level in different countries (Mexico, Germany), among which figures the International Covenant on

Economic, Social and Cultural Rights (ICESCR) (Pizzolo, 1999). Social rights, also called positive freedoms, in many cases require much more for their effective application than State non-intervention in the individual sphere. They require the deployment of State activity that involves political, economic and social resources destined to guarantee the effectiveness of the given rights.

The human right to water and sanitation forms part of these rights that require the State's active performance, at least as organizer of the service, without necessarily being its supplier. It is within the human rights framework as a historical construction that a change of perspective can be observed in administrative law.

Even if the ICESCR was signed in 1966, it was only put into practice on an international level ten years later, in 1976. Recently, with the explosion of the international law on human rights this subjective view has begun to gravitate strongly in a jurisprudence that recognizes with greater frequency the operative value of these rights beside its effectiveness.

In this brief display can be appreciated how the systems protecting the right to water have evolved. Law historicity is seen in the evolution of its guarantees. Confronted by its initial and quite exclusively negative content, of mere respect, that supposes the "*common use*" of water –from the individual- and is founded on the value of freedom, the positive content of providing a positive guarantee of real equality is incorporated, represented by the generalization of water and sanitation *public services* that enables the exercise of that freedom –now part of society- and how finally it ends by making up a complex set of norms with *human rights* that imply the co-existence of positive and negative guarantees (respect, protect and fulfill).

Thus, this evolution has brought about a significant progress in its protection. Beginning with the limited interpretation of *common use*, in which the right to water was a mere "simple interest", it next turned into a *public service*, to finally become a guarantee conferred by the systems of *human rights* protection, even contemplating legal instances of supranational tutelage.

### III. The recognition of the human right to water and sanitation in the international legal discourse

Many are the norms in international law that can serve in Latin America as foundation to a right to water and sanitation by alluding to it directly. Indirectly, all the norms that recognize interdependent or linked rights, such as the right to health, to decent housing, to water or to an adequate living environment, etc., can do likewise.

However, the right to sanitation also is founded in those treaties that refer to the right to "decent living conditions" or to an "adequate standard of living" and even to its improvement. As states for example: The Universal Declaration of Human Rights: "...Every person has the right to an adequate standard of living which may insure for him and his family, health and well-being, and especially having to do with nourishment, dress, housing, medical assistance and the necessary social services" (art. 25 clause 1) and in its Preamble, it proposes to promote social progress and elevate the standard of living within a wider concept of freedom. The International Convention for the Elimination of all sorts of Racial Discrimination stipulates the "...right of access to all places and services destined for public use, such as means of transport, hotels, restaurants, cafeterias, shows and parks" (art. 5, clause. f); the Convention on the Rights of the Child recognizes the "right of every child to an adequate standard of living for his physical, mental spiritual, moral and social development." (art. 27).

Law concepts that, although with a high degree of indetermination, needless to say, are absolutely incompatible with a lack of total satisfaction of a right to water and sanitation as prefigured in this work.

In fact, and only to mention a few, although the ICESCR (ratified by 160 States) does not expressly refer to the HRWS, it does so in an implicit way when it recognizes "...the right for all persons to an adequate standard of living for himself and his family, including nutrition, dress, and adequate housing and a continuous improvement in conditions of existence." (art. 11). Although not compulsory, the precisions effected by the ICESCR committee, in OG Nr 15 (2002) that includes among the basic obligations of the States: "i) To adopt measures to prevent, treat and control sicknesses associated to water, particularly watching over the access to adequate sanitation services" are particularly important.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) expressly claims "...the right to enjoy adequate living conditions, particularly in the sphere of the home, of sanitary services, electricity and water supply, transport and communications" (art. 14, clause. h).

On a regional level, the Additional Protocol to the American Convention of Human Rights on Matters of Economic, Social and Cultural Rights (San Salvador Protocol) establishes that all people have the right to "...live in a healthy environment and count on basic public services" (art. 11), among which sanitation will undoubtedly figure.

Although not entailing, particularly transcendental are the precisions carried out by the ICESCR committee in the General Observation N° 15 (2002) that includes among the basic State obligations "...i) To adopt measures to prevent, treat and control the diseases associated with water, particularly guarding the

access to adequate sanitation services...”; and the recent (2010) express recognition of both rights carried out by the UN General Assembly where: “Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights” (1st point); and “Calls upon States and international organizations to provide financial resources, capacity building and technology transfer, through international assistance and cooperation, in particular in developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all” (2nd point) (United Nations A/64/L.63/Rev. 1\*- General Assembly).

These miscellaneous norms of international law which offer a positive basis for the recognition of these rights must, however, be completed with the most dynamic of pictures painted by Latin American countries in the evolution of national law that are ceaselessly effecting this recognition in their Constitutions (vgr. Bolivia, Colombia, Ecuador, Mexico, Venezuela), legislation and jurisprudence (quoted in Martin et al, 2011).

The effected international and national norm barely mentioned, far from being exhaustive, is sufficient to affirm that the HRWS has been expressly and implicitly recognized by constitutions, laws and many international pacts on human rights, ratified by Latin American countries. This right is proper to social constitutionalism, which has become especially relevant since the international law on human rights has achieved greater importance in the legal hierarchy.

On the other hand, one must take into account the process –that might be considered global- of the growing legitimacy of human rights (Douzinas, 2008) that allows contextualizing the changes produced, both in constitutional law and in its social consideration (vrg, Argentinian Constitution that incorporated directly the human rights treaties in his text, art. 75 inc. 22). The consecration of new rights, at least in western States, is a near constant, though not an equal predicament to its effectiveness. In this sense, we can maintain that it has operated an enormous inflation of rights, in a certain measure alienated from political, economic, social and/or cultural contexts in their application. This is only a warning about the need to incorporate, in the analysis and perspectives related to determined human rights, variables that compromise determining aspects which exceed the norm (Legendre et al, 1987; Veron, 1987).

This massive and out of context inflation of human rights has placed in evidence one of the structural contradictions: due to the legal mesh, anyone can become a human rights subject, an active subject who can demand the guarantee conferred by the declarations of rights. Usually, the “ideal type” of protected subject is the one deprived, including “de iure”, of the protection of human rights. Thus, the illegal immigrant, with only his humanity on his shoulders, is systematically deprived of legal state and international protection, given the dependence between human rights and citizenship (Agamben, 2000; Zizek, 2005).

#### **IV. Between law and international politics: Resolution of the UN General Assembly, July 28, 2010 (A/RES/64/292)**

Summarizing, among other premises, we maintain in a Latin American context (US and Canada have not ratified the Interamerican convention on human rights) that the HRWS has been recognized by law since the nineteenth institute for the common use of water, public service and now human rights, thus forming a simultaneous and multiple protection and regulation from diverse subsystems. Putting into effect the right to water is not only an issue of water availability but fundamentally an economic problem and therefore a problem of poor countries. The central issue of its recognition is its integration to a legal system that basically implies the clear establishment of its limits and articulation with concrete and regulatory devices in force that control drinking-water cuts and restrictions by the public service, common use limitations and altering the order of priorities in granting water concessions, among others (Martin et al, 2008).

In spite of these advances, within the literature that has shown a more rigorous approach, different points of view are taken concerning legal sources, contents, limits and effects (Embid Irujo, 2006; Smets, 2010, among others). But these disagreements, however, do not only end on the scientific plane, but also reach and are strongly linked to the political sphere leading to the usual systematic frustration of producing a political declaration or recognition in diverse conferences and international forums (as has recently occurred in the WWF that took place in Mexico (2006) and in Istanbul (2009) respectively).

This type of context warns us that the difficulties of finding agreements do not arise exclusively from different standpoints and scientific sub-disciplines where this specified right has been recently approached (rights to human rights, constitutional law, water law, administrative law, environmental law, and international law). The difficulty arises fundamentally from different regional and national legal systems and diverse socio-economical substrata where norms are produced and tentatively applied reflecting, with different intensity, the interests of political agents involved (governments, companies, international organisms and NGOs, among others).

The relevant political characters in the fray over the recognition and implementation of the HRWS are generally visible on both sides. On the one side, the third sector (GNOs, CSOs, and others), some

international organisms who preach the right's recognition but do not attend to limits, and some companies related to water services administration who together with their respective international organizations are opposed to this recognition.

The key political factor, difficult to decipher is, without doubt, the State. Given its role of arbiter, added to its changing nature, one must keep in mind that it will have to meet the responsibility and expenses rising from this right effectiveness. Apart from the fact that its political attitude may be modified by other aleatory accessory data like economic resources availability, abundant hydric resources or by being localized up-river; in which case it will appear under a potential obligation to share its waters with other citizens and/or member states of the same federation or even with foreigners.

The fact remains that the logic following countries' alignment when celebrating treaties is never automatic. This was clearly shown in the negotiation and ratification of the New York Convention in 1997, and more recently during the discussion over the climactic change agreement which replaced the Kyoto Protocol, and failed in Copenhagen on November 2009.

This countries alignment is not produced in a lineal and homogeneous manner, proven by the voting carried out by the UN General Assembly on July 28, 2010. It is evident that the data from developed/underdeveloped countries and ulterior national/international responsibilities due by the States in the attainment of HRWS have determined the attitude assumed by the countries beyond and even against their own positive right. In effect, the ulterior internal responsibility that would be the outcome from such declarations was the argument used by developing countries or with scarce possibilities of making effective the HRWS. But this debate is false up to a certain measure because the content of the HRWS is relative and progressive, canons in the light of which the responsibility on an internal and international plane will be judged.

Despite this, although in accordance with the very inferior levels of efficacy of a theoretical HRWS, it is the under developed countries who have already included it in their Constitutions (Ecuador, Bolivia, Venezuela and many African countries) or are about to do so (Mexico). Together with these are those who have promoted the most important international recognition, like the one taking place at the July 28, 2010, UN General Assembly. Even though, paradoxically, they lack the necessary economic resources to assume the responsibility of making effective this type of right.

On the other hand, European countries with HRWS levels of satisfaction far superior to Latin American or African standard have not proceeded to modify their regulations, being more reticent regarding its express inclusion, although they have shown remarkable interest in its conceptualization and in participating in international negotiations for its definite acceptance.

The paradox, although with a certain logic, is that it is the underdeveloped countries, those with scarce levels of satisfaction in the right to water, who promote the HRWS recognition, while those who present high indexes of covering abstain from doing so. The proposals of the paradox are less rigid since there are notable exceptions to that logic of alignment. In any case, the numerical and qualitative superiority of favorable votes to the Resolution of the General Assembly of July 28 (A/RES/64/292) clearly shows the undeniable reality: the right to water and sanitation as a human right.

In the different international forums, a lack of connection is evident between the position adopted by the States, or regional authorities, answering to a purely political dimension of the HRWS, and the legal one observed inside the country. In fact, the U.S. abstained from voting on the general meetings of July 28, 2010 does not coincide exactly with the recognition of right to water made by the States of Illinois, Pennsylvania, Massachusetts and Texas, nor any case law U.S. Supreme Court, *Winters v. United States*, 207 U.S. 564 (1908), *Arizona v. California*, 373 U.S. 546 (1963).

Spain and France, to a certain measure as examples of developed countries, have maintained a leading position notably in favor of the HRWS recognition in the different international forums, in accord with the evolution of their interior legal code (many Autonomies statutes and The French Act 2006-1772.), which have increasingly recognized this right for their own citizens.

On the other hand, the European Union without including the HRWS in its normative texts or endorsing the recognition of this right at the 5th World Water Forum in Istanbul, 2009, seems to be changing due to the important recognition proclaimed on March 22, 2010, by the Ministry Council Mme. Catherine Ashton at the commemoration of the International Day of Water, who said: « L'UE estime également que les obligations en matière de droits de l'homme relatives à l'accès à l'eau potable et à l'assainissement sont étroitement liées aux droits de l'homme tels que le droit au logement, à l'alimentation et à la santé (...) Non seulement, l'accès à l'eau potable est lié aux droits de l'homme, mais qui plus est, il fait partie intégrante du droit à un niveau de vie suffisant et il est étroitement lié à la dignité humaine (...) L'UE salue les efforts déployés par certains pays - y compris plusieurs États membres de l'UE - qui, pour améliorer cette situation tragique, ont pris des mesures spécifiques, notamment législatives, aux niveaux national et international afin de faciliter l'accès à l'eau potable et à l'assainissement.» Extrait du Communiqué de presse 7810/10 (Presse 72) du 22 mars 2010 <http://www.consilium.europa.eu/uedocs/cmsUpload/112765.pdf>. [10/9/2010]

An opinion that is reflected in the affirmative vote favorable to its recognition by relevant European countries like Germany, France and Spain among others, at the United Nations General Assembly of July 28, 2010.

This winding path finds a landmark in the recognition of the right to water within human rights in the resolution of the General Assembly just mentioned. Of scarce or null legal weight, it is imbued with significant political importance revealed by the wide majority obtained (122 votes in favor), but also in the meaningful 41 abstentions (developed countries in the majority, among which figure the United Kingdom, USA, Australia and Canada).

Even though, the list of the abstentions is also composed by: Armenia, Australia, Austria, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Greece, Guyana, Iceland, Ireland, Israel, Japan, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Slovakia, Sweden, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States, Zambia.

In that sense, some explanations results at least unsatisfactory as the one of the US Deputy Representative to the Economic and Social Council (ECOSOC), that we prefer to reproduce literally: "Mr. President, The United States is deeply committed to finding solutions to our world's water challenges. We support the goal of universal access to safe drinking water. Water and sanitation issues will be an important focus at this September's Millennium Development Goal Summit. The United States is committed to working with our development partners to build on the progress they have already made in these areas as part of their national development strategies. Water is essential for all life on earth. Accordingly, safe and accessible water supplies further the realization of certain human rights, and there are human rights obligations related to access to safe drinking water and sanitation. The United States supports the work of the UN Human Rights Council's Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. In fact, we co-sponsored the resolution on Human Rights and Access to Safe Drinking Water and Sanitation last September at the Human Rights Council in Geneva. We look forward to receiving the next report of the Independent Expert. We also look forward to a more inclusive, considered, and deliberative approach to these vital issues in Geneva than we have unfortunately experienced on this resolution in New York. And I would just add to my prepared remarks that these concerns are not alleviated by the fact that just this morning, we have seen an amendment made to what the lead sponsor viewed as the core operative paragraph of the resolution from the floor. This again is an imposition on all of us. We haven't had sufficient time to really consider the implications of this, and I think that it would have been far better, under the circumstances, not to bring this resolution forward for action today. The United States had hoped to negotiate and ultimately join consensus on this text, on a text, that would uphold and support the international process underway at the Human Rights Council. Instead, we have here a resolution that falls far short of enjoying the unanimous support of member States and may even undermine the work underway in Geneva. This resolution describes a right to water and sanitation in a way that is not reflective of existing international law; as there is no "right to water and sanitation" in an international legal sense as described by this resolution. The United States regrets that this resolution diverts us from the serious international efforts underway to promote greater coordination and cooperation on water and sanitation issues. This resolution attempts to take a short-cut around the serious work of formulating, articulating and upholding universal rights. It was not drafted in a transparent, inclusive manner, and the legal implications of a declared right to water have not yet been carefully and fully considered in this body or in Geneva. For these reasons, the United States has called for a vote and will abstain on this resolution." Explanation of Vote by John F. Sammis, United States Deputy (New York, NY, July 28, 2010).

As referred to above, and beyond a formal explanation given for these abstentions, a possible cause may not be due to point 1 of the resolution ("Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights"), a reality which it is difficult if not impossible to contradict given the current situation; but rather with point 2 where the international financial responsibility of developed countries is strongly committed when it says: "Calls upon States and international organizations to provide financial resources, capacity building and technology transfer, through international assistance and cooperation, in particular in developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all" (A/RES/64/292 – A/64/L.63/Rev. 1\*- General Assembly, NU).

This pronouncement reveals and confirms one of the central assumptions to which this contribution, with the remark that the theoretical challenge is posed neither in its positive recognition nor in its international political proclamation, empty and disconnected from the rest of the norms and from reality, but rather in its effective execution according to a relative, progressive, and harmonious determination of its content and limits related to a concrete legislation and regulation of waters, territorial codes, and public services, etc. of each country, a program in which we are slowly but continuously advancing.

This special human right discuss not only the efficacy of social and human rights generally but its very existence (Douzinas, 2008). No less paradoxical in this context is the null gravitation that human rights law is having in the construction of a new international law that, centred in protecting corporations and investments, is conferring a feudal character to global legal system (Kriebaum, 2007).

Given that this paper seeks to put the focus in the context of production and application of HRW and it is intended for discussion at the Congress, we can leave some questions raised. In that sense, we can leave some questions raised. According to the advance of human rights in the international legal order, is it pertinent to continue questioning the legal nature of the right to water and sanitation? Can different answers be given at a regional and national level? Can one consider the availability of economic resources sufficient a condition for recognizing a right like the HRWS? Is the possibility of the effectiveness of a human right a valid criterion about the necessity of its recognition? Will the express and specific legal consecration of this right contribute to a greater satisfaction, as the dominant speech in its favor argues? Will the states' liability be gravely compromised by the right's recognition, as its detractors warn? Will the same thing occur with respect to developed or under-developed States?

Can the treatment of HRWS be placed on the same level with countries that sustain levels of social cover near to 100 % of their population? Does the water and sanitation problem belong only to poor states? If this is not so, is there any sense in searching for a common position? Do some States have obligations toward others? Do differences between Latin American and European constitutionalism with the respective systems of human rights, European and inter American, carry a different conclusion with respect to the interpretation and insertion of HRWS in the legal system?

Thus two issues are posed, two extremely important terms that must be properly articulate in order to investigate wider horizons regarding international legal discourse about the HRWS. Legal and political reasons, although both disparate, are joined and related in such a way that one cannot be explained without the other. Politics, by bringing its force on the side of legitimacy, and law by delimiting what is legality. Concepts from which must be undertaken, nowadays, a critical approach to the HRWS, with a strong anchor in the realities where law lives, that allows a wider rights effectiveness.

## **V. Conclusions**

The HRWS has been recognized by international and national law of many Latin American countries through various categories (common use, public service and human rights) for a long time, although it has acquired greater relevance with the growing importance of international law on human rights.

From this, it can be ascertained that it can be studied methodically like an autonomous conceptual category, without implying to ignore its simultaneous character of public service and the interdependence that it presents with other rights, like the right to water, to health, to the quality of life, to a decent home or an adequate environment.

Its consolidated recognition in Latin America is not consistent however with the very low levels of efficiency arises. Its consideration as a human right may contribute to its generalization but, at least in emerging or undeveloped countries, a greater legal reception or better access to justice will not be the key piece to its generalized effectiveness. On the contrary, the key piece will be found in the implementation of public policies and in the specific, efficient, systematic and controlled assignments of genuine economic resources for its satisfaction.

Then, the main causes that obstruct HRWS implementation in Latin America do not exclusively refer to a lack of norm recognition, to a problem of legal efficacy, not even to a lack of hydric resources, but fundamentally to political-economic problems, of development and unequal resources distribution.

The overwhelming recognition by the United Nations General Assembly of July 28, 2010, although of scarce or null legal significance does settle sterile discussions of the past years, while imbued with great political importance, it must reflect on the significance of the 41 abstentions (from developed countries in majority).

The arguments formulated by these countries to hinder (or abstain from) the recognition of the HRWS (related to a lack of consensus, inflation of rights, unlimited demand of hydric resources, impossibility of its satisfaction, etc.), are both fallacious and illegal since they sometimes even go the length of contradicting their own legal frameworks. Very often they do not agree with the real motives which actually refer to the internal or international responsibility following the attainment of the right.

This responsibility – which has not been sufficiently weighed - on the internal plane, generally implies a fear of a massive claim for a right whose content has been proved to be limited, relative, variable and of progressive satisfaction, as with all human rights. It is also needless to discuss the fact that its recognition by some countries has not provoked any of the disorders announced.

On the international level, on the contrary, the fear refers to a potential commitment due to having to share hydric resources and engage financial contributions that will allow its universal attainment in developing countries, as stated in the declaration of the UN General Assembly of July 28, 2010. But as we

know, the fulfilment of these international duties and obligations, due to the lack of certain mechanisms cannot be compulsively put into practice.

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